

[Advisory Opinion 1998-4]

**MONTGOMERY COUNTY ETHICS COMMISSION**

**ADVISORY OPINION**

**April 7, 1998**

A member of the County Council staff requested advice regarding her participation as the Council analyst on the Department of Health and Human Services (“DHHS”) budget and programs in view of her husband’s “involvement” with the Family Therapy Institute of Washington, D.C. (the “Institute”), an organization that has a contract with DHHS. In particular, she asked:

1. For guidance on whether she may make recommendations to the Council regarding County funds that the Institute receives or has a potential to receive;
2. If she may continue in her full role as analyst for the DHHS budget and programs if her husband recuses himself from responsibilities at the Institute associated with seeking and administering County funds; and
3. If there is any conflict of interest in her now reviewing those services that DHHS negotiated with the Institute before her husband’s new role at or relationship with the Institute.

**PERTINENT FACTS**

As set forth in her letter, the pertinent facts are as follows:

1. She is a member of the County Council’s central staff and its principal analyst for the DHHS budget and programs generally, and the capital budget of the Montgomery County Public Schools.
2. Prior to October 1, 1997, her husband rented space in Rockville from the Institute for use in his private counseling practice. The relationship at that time was merely that of landlord and tenant.
3. In October, 1997, the owner of the Institute requested that her husband take “an active role” in the Institute’s business, including help with expanding its services. For this work, the Institute’s owner provides her husband with free space in which to see his clients. In addition, her husband is able to choose cases from those who call the Institute looking for therapy.

4. The Institute has a “non-profit arm” that contracts with the DHHS to provide therapeutic services to juvenile sex offenders. The maximum compensation under the current contract, which terminates on June 30, 1998, is \$50,000.
5. If the Council appropriates the funds to continue this program, DHHS will request proposals to award the contract on a competitive basis beginning July 1, 1998, and the Institute or its non-profit arm may again be awarded the contract.

### **APPLICABLE LAW**

The Montgomery County Ethics Law prohibits a public employee, unless permitted by a waiver, from participating in any matter that affects, in a manner distinct from its effect on the public generally, any property or business in which a relative has an economic interest, if the public employee knows about the relative’s interest. §19A-11(a)(1)(C). A public employee also must not participate in a matter if the public employee knows that any party to that matter is a business in which a relative of the public employee has an economic interest. § 19A-11(a)(2)(B).

However, Sec. 19A-8(a) authorizes the Commission, after receiving a written request, to grant to a public employee a waiver of the prohibitions of § 19A-11(a) if the Commission finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public;

### **CONCLUSION**

After carefully considering the matter, the Commission advised that § 19A-11 prohibited her from making any recommendation to the County Council regarding the program or services that DHHS provides or may provide through the Institute or its non-profit arm, including, but not limited to the funding of that program.

Furthermore, treating her letter also as a request for a waiver of that prohibition, the Commission unanimously concluded that she did not meet the waiver requirements of §19A-11.

Therefore, she must not participate in any manner in the analysis or making of any recommendations regarding the program or services that DHHS provides or may provide through the Institute or its non-profit arm.